

Memorandum / Staff Report:

To: Water & Sewer Board  
From: Natalie Schneider, Project Manager *NS*  
Date: September 20, 2023  
Regarding: Perpetual Water Main Easement – Anita’s Gardens

As part of the approved construction plans for a water main extension being constructed by the developer, **Lisbon Lot, LLC**, for a proposed building located at the southwest corner of W. Lisbon Road and Pilgrim Road., an easement is needed for the construction and perpetual maintenance of the water main being constructed by the developer.

The attached easement document and resolution provide for acceptance of this easement.

Staff recommends approval of the resolution and the attached Perpetual Water Main Easement document.

Resolution Number \_\_\_\_\_ for the City of Brookfield, Wisconsin

Resolution Number:

Resolution Title:

WHEREAS, Lisbon Lot, LLC (“Developer”) is developing a residential care facility located at the southwest corner of W. Lisbon Road and Pilgrim Road (“Property”);

WHEREAS, the Developer wishes to place water service onto the Property;

WHEREAS, it is in the best interest of the City of Brookfield to approve a Perpetual Water Main Easement, which is attached hereto as Exhibit A and incorporated by reference, for the water main at the Property , and

WHEREAS, the City of Brookfield Water & Sewer Board considered said Perpetual Water Main Easement for the water main at the Property at its meeting held on October 10, 2023 and recommends approval thereof.

NOW, THEREFORE, BE IT RESOLVED, by the Common Council of the City of Brookfield that a Perpetual Water Main Easement is approved for the water main for the Property, and

BE IT FURTHER RESOLVED, that the proper city official(s) be hereby authorized and directed to carry out the council’s action, including, but not limited to signing documents, implementing technical revisions to documents to effectuate the best interest of the City, and correcting scrivener’s errors.

Adopted this [insert day] day of [insert month] [insert year].

Approved:

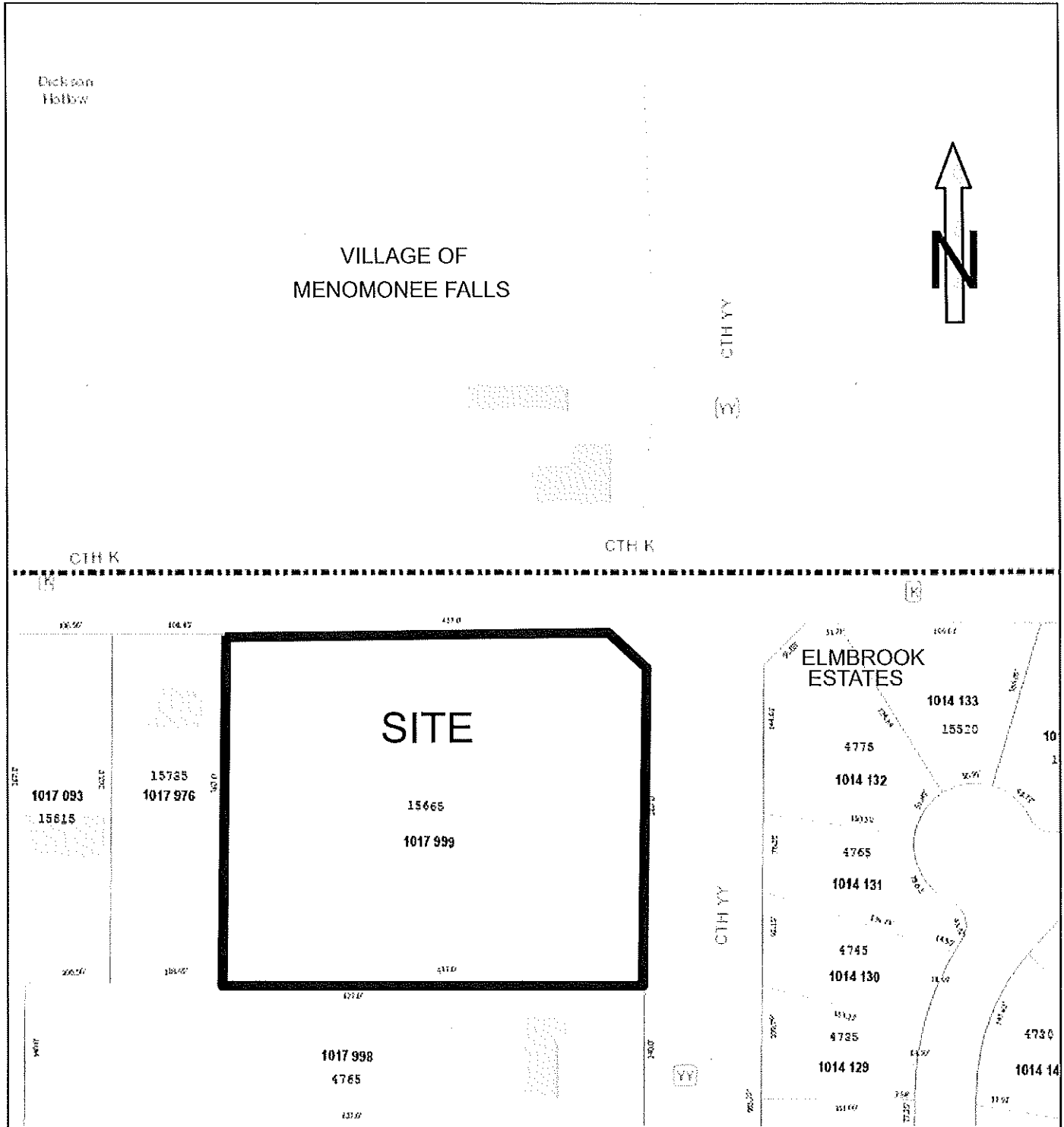
Attested:

\_\_\_\_\_  
Mayor Steven V. Ponto

\_\_\_\_\_  
City Clerk Michelle Luedtke

Publication Date: [insert month, day, year]

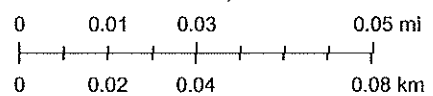
# Location Map



10/4/2023, 10:51:02 AM

1:2,257

- Curve ROW
- Parcel Dimensions Tax Parcels
- Structure
- City Limits



Waukesha County, Esri Canada, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA

Document No.

**PERPETUAL WATER MAIN EASEMENT  
AGREEMENT**

Return to:  
City of Brookfield  
c/o City Clerk  
2000 North Calhoun Road  
Brookfield, WI 53005

Parcel Number

**PERPETUAL WATER MAIN EASEMENT**

This Perpetual Water Main Easement Agreement (“Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 202\_, by and between **Lisbon Lot, LLC**, (“Grantor”) a limited liability company, whose mailing address is N63 W23217 Main St Suite 200, Sussex, WI 53089, and the City of Brookfield (“City”), a municipal corporation whose mailing address is 2000 North Calhoun Road, Brookfield, Wisconsin, 53005.

**RECITALS:**

WHEREAS, Grantor owns certain real property (“Property”) located in the City and more particularly described on **Exhibit A** attached hereto and incorporated herein by reference; and

WHEREAS, the City desires to acquire a permanent and perpetual exclusive water main easement into, under, on, over, across, through, and upon that certain portion of the Property as shown on the attached **Exhibit B**, attached hereto and incorporated herein by reference (“Easement Area”), with the right of entry in and across the Property; and

WHEREAS, Grantor desires to place water service onto the Property to raise its value and so that it can use the water service at the Property.

NOW, THEREFORE, in exchange for \$1.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and the conditions specified herein, City and Grantor hereby agree as follows:

1. **Recitals.** The above-referenced recitals are correct and hereby incorporated by reference.
2. **Grant of Easement.** Grantor grants and conveys unto City a permanent and perpetual, exclusive water main easement (“Easement”) into, under, on, over, across, through, and upon that certain portion of the Property for the construction, operation, use, maintenance, repair, and reconstruction of the water main in the Easement Area.
3. **Restoration.** Except for trees or landscaping within the Easement Area, City shall replace, at its sole expense, in substantially the same condition as at the time of disturbance or damage, the surface or subsurface of the soil that the City disturbs or damages in the construction, operation, use, maintenance, repair, or reconstruction of the Easement Area.
4. **Right of Entry.** Grantor consents to the entry by the servants, employees, workers, agents, or independent contractors of City for and incidental to the construction, operation, use, maintenance, repair, and reconstruction of the Easement Area, but reserves the right to make such use of the land included in the Easement Area which will not disturb or interfere with such water main or prevent ingress or egress thereto for the purpose of construction, operation, use, maintenance, repair, or reconstruction thereof.
5. **Encroachments.** Grantor desires to install Landscaping (“Encroachments”) in the Easement Area as annotated and depicted on **Exhibit C**, which is attached hereto and incorporated by reference. If any Encroachments are disturbed, destroyed, or outlive their useful life at any time, they can be replaced subject to the procedure set forth in Section 6 of this Agreement. Grantor acknowledges that the Encroachments that remain within the Easement Area are at risk for destruction during any subsequent maintenance or reinstallation procedures performed within the Easement Area. Grantor acknowledges the City shall not replace nor repair any of the Encroachments and shall not be liable for any damage to or in relation to the disturbance of such Encroachments. Grantor shall pay the City any additional or extra costs incurred by the City for operating, maintaining, and replacement of its water main required because of the Encroachments.
6. **Interference.** Other than the initial installation of the Encroachments as depicted in **Exhibit C**, Grantor shall submit plans for review and approval by the City’s Director of Public Works, or designee, for any proposed improvement, alteration, or modification, including the placement of trees and shrubs, that Grantor would like to

complete in the Easement Area. City review will be limited to compliance with City ordinances and preventing interference with the construction, operation, use, maintenance, repair, or reconstruction of the water main or access thereto. Construction of buildings, stoops, walls, fencing, or permanent structures of any kind within the Easement Area is prohibited unless otherwise approved by the City's Director of Public Works.

7. **Venue and Governing Law.** This Agreement shall be governed in all respects, whether as to validity, construction, capacity, performance, or otherwise, by the laws of the State of Wisconsin. Any suit, proceeding, or other action arising out of or related to this Agreement shall be commenced and maintained only in a court of competent jurisdiction in the state court located in Waukesha County, Wisconsin or federal court located in Milwaukee County, Wisconsin. Each party irrevocably consents to submit to the exclusive jurisdiction of such courts.
8. **Indemnification.** Grantor, its successors, heirs, and assigns hereby indemnifies and holds harmless the City and its elected and appointed officials, officers, employees, and authorized representatives from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs, and expenses of whatsoever kind or nature ("Claims") which might arise or be asserted against the City from the construction, presence, existence, or maintenance of the Easement or water main by the Grantor or the City, except that this provision shall not apply to the extent that the Claims result from or arise out of the sole negligence or willful misconduct of the City or its elected and appointed officials, officers, employees, or authorized representatives. In the event a Claim subject to indemnity under this provision is asserted against the City, its elected and appointed officials, officers, employees, or authorized representatives, the City shall promptly notify the Grantor, and the Grantor shall defend, at its own expense, any suit based on such Claim. If any judgment or Claims subject to indemnity under this provision against the City, its elected and appointed officials, officers, employees, or authorized representatives shall be allowed, the Grantor shall pay for all costs and expenses in connection herewith.
9. **Binding on Future Parties:** This Agreement shall run with the Property and shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, administrators, successors, and assigns.
10. **Entire Agreement; Modification; Recording:** This Agreement shall be recorded with the Waukesha County Register of Deeds and constitutes the entire agreement of the parties with respect to the subject matter hereof and the easements herein granted shall be perpetual in duration and, except as provided for herein, shall not be changed, altered, modified or amended, except by an instrument in writing executed by the City and Grantor, or each of their respective heirs, successors, or assigns, and recorded with the Waukesha County Register of Deeds.

11. **Enforcement.** This Agreement may be enforced by proceedings at law or in equity by or against the parties hereto and their respective successors in interest.
12. **Severability.** Invalidation of any one of the provisions of this Agreement shall in no way affect any other provisions and all other provisions shall remain in full force and effect.
13. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.
14. **No Liens.** No party to this Agreement shall permit any claim, lien or other encumbrance arising from any party's use of the Easement referenced herein to accrue against or attach to the property of any other party to this Agreement.
15. **Authority to Sign.** The undersigned persons executing this document on behalf of City and Grantor represent and certify that they are fully empowered to execute and deliver this document; that Grantor has full capacity to convey the real estate described here; and that all necessary action for the making of such conveyance has been taken and done.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

GRANTOR: Lisbon Lot, LLC

By: [Signature]  
Arthur Sawall, Member

STATE OF Wisconsin )  
Waukesha COUNTY ) SS.

Personally came before me this 23 day of August, 2023, the above named Arthur Sawall, Member of Lisbon Lot, LLC to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

[Signature]  
Notary Public  
My Commission Expires: 5/7/2025

Accepted Pursuant to the Authority of Common Council on the \_\_\_ day of \_\_\_\_\_, 2023.

CITY: \_\_\_\_\_  
Steven V. Ponto, Mayor

\_\_\_\_\_  
Michelle Luedtke, City Clerk

STATE OF WISCONSIN )  
 ) SS.  
WAUKESHA COUNTY )

Personally came before me this \_\_\_ day of \_\_\_\_\_, 2023, the above named Steven V. Ponto and Michelle Luedtke Mayor and City Clerk, respectively, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

Instrument drafted by City of Brookfield.



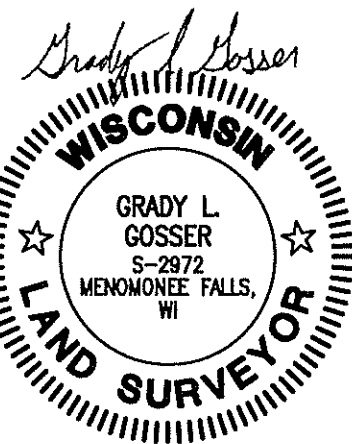
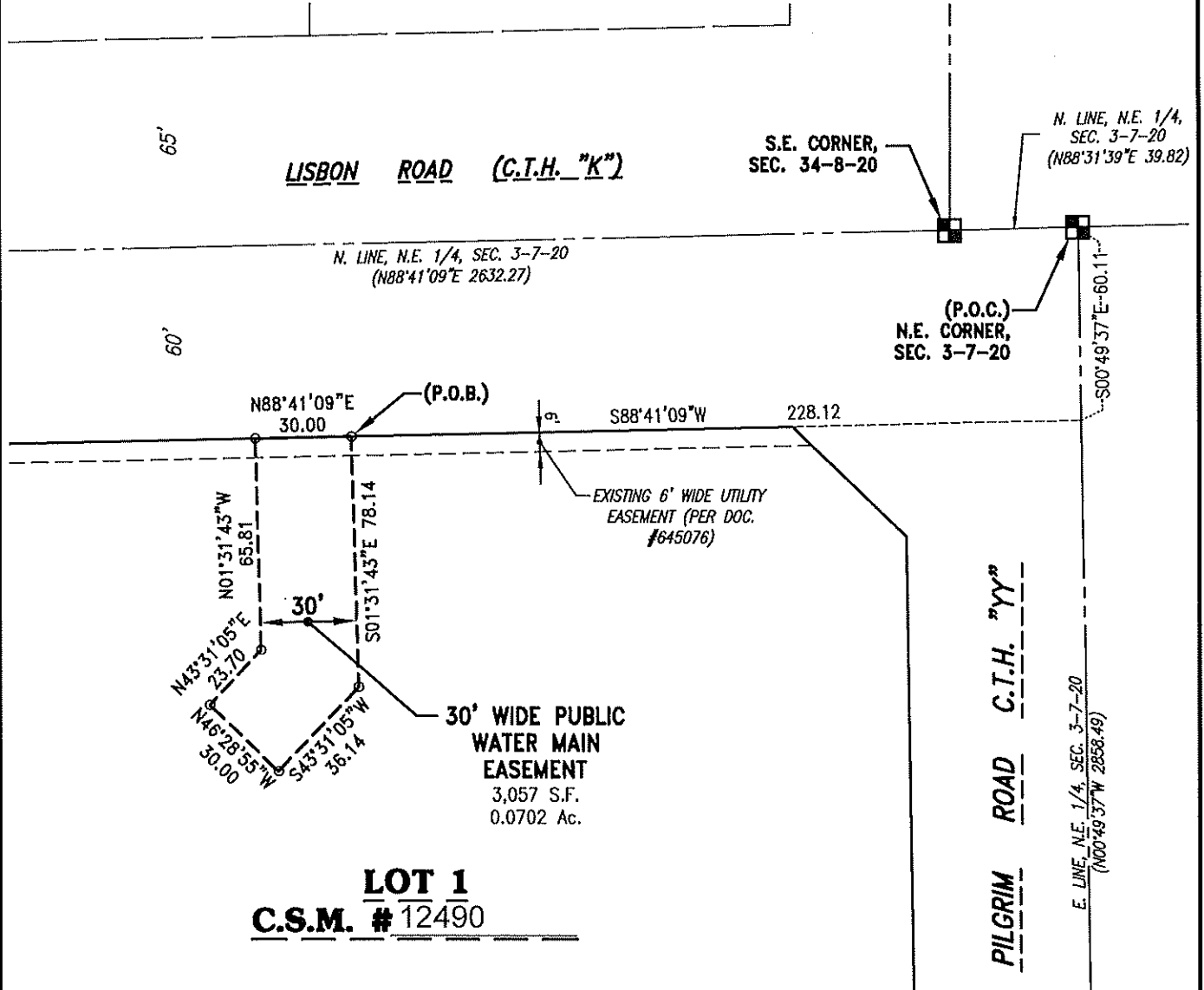
Exhibit A  
Property Legal Description

Lot 1 of Certified Survey Map No. 12490, recorded in the Office of the Register of Deeds for Waukesha County on September 19, 2023, as Document No. 4737788, being a part of the Northeast 1/4 of the Northeast 1/4 of Section 3, Town 7 North, Range 20 East, in the City of Brookfield, Waukesha County, Wisconsin.

# EXHIBIT "B"

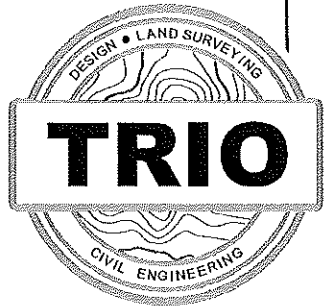
## CITY OF BROOKFIELD

### 30' WIDE PUBLIC WATER MAIN EASEMENT

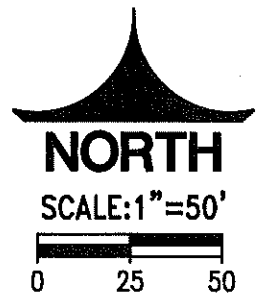


**NOTES:**

- ALL BEARINGS ARE REFERENCED TO GRID NORTH OF THE WISCONSIN STATE PLANE COORDINATE SYSTEM, SOUTH ZONE (NAD-83/2011), IN WHICH THE EAST LINE OF THE N.E. 1/4 OF SECTION 3, TOWN 7 NORTH, RANGE 20 EAST, BEARS N00°49'37"W.



**4100 N. Calhoun Road**  
**Suite 300**  
**Brookfield, WI 53005**  
Phone: (262) 790-1480  
Fax: (262) 790-1481



SHEET: 1 OF 2  
DATE: 8/28/23

THIS EXHIBIT WAS DRAFTED BY GRADY L. GOSSER, P.L.S. (S-2972)

X:\2022\22-070-074\_Sowill\_CBRF\_Brookfield\_Drawing\Survey\EXHIBITS\8655\EX01-WATERMAIN.dwg

# EXHIBIT "B" CONTINUED

## CITY OF BROOKFIELD

### 30' WIDE PUBLIC WATER MAIN EASEMENT

#### LEGAL DESCRIPTION:

A 30' Wide Public Water Main Easement located on, over and across part of Lot 1 of Certified Survey Map No. 12490, recorded in the Office of the Register of Deeds for Waukesha County on 09/19/2023, as Document No. 4737788, being a part of the Northeast 1/4 of the Northeast 1/4 of Section 3, Town 7 North, Range 20 East, in the City of Brookfield, Waukesha County, Wisconsin, now being more particularly bounded and described as follows:

Commencing at the Northeast corner of the said Northeast 1/4 Section; Thence South 00°49'37" East and along the East line of the said Northeast 1/4 Section, 60.11 feet to a point; Thence South 88°41'09" West along the South Right-of-Way line of "Lisbon Road" (C.T.H. "K") and the Easterly extension thereof, 228.12 feet to the place of beginning of lands hereinafter described;

Thence South 01°31'43" East, 78.14 feet to a point; Thence South 43°31'05" West, 36.14 feet to a point; Thence North 46°28'55" West, 30.00 feet to a point; Thence North 43°31'05" East, 23.70 feet to a point; Thence North 01°31'43" West, 65.81 feet to a point on the said South Right-of-Way line; Thence North 88°41'09" East and along the said South Right-of-Way line, 30.00 feet to the point of beginning of this description.

Said Easement contains 3,057 Square Feet (or 0.0702 Acres) of land, more or less.

Date: 8/28/2023

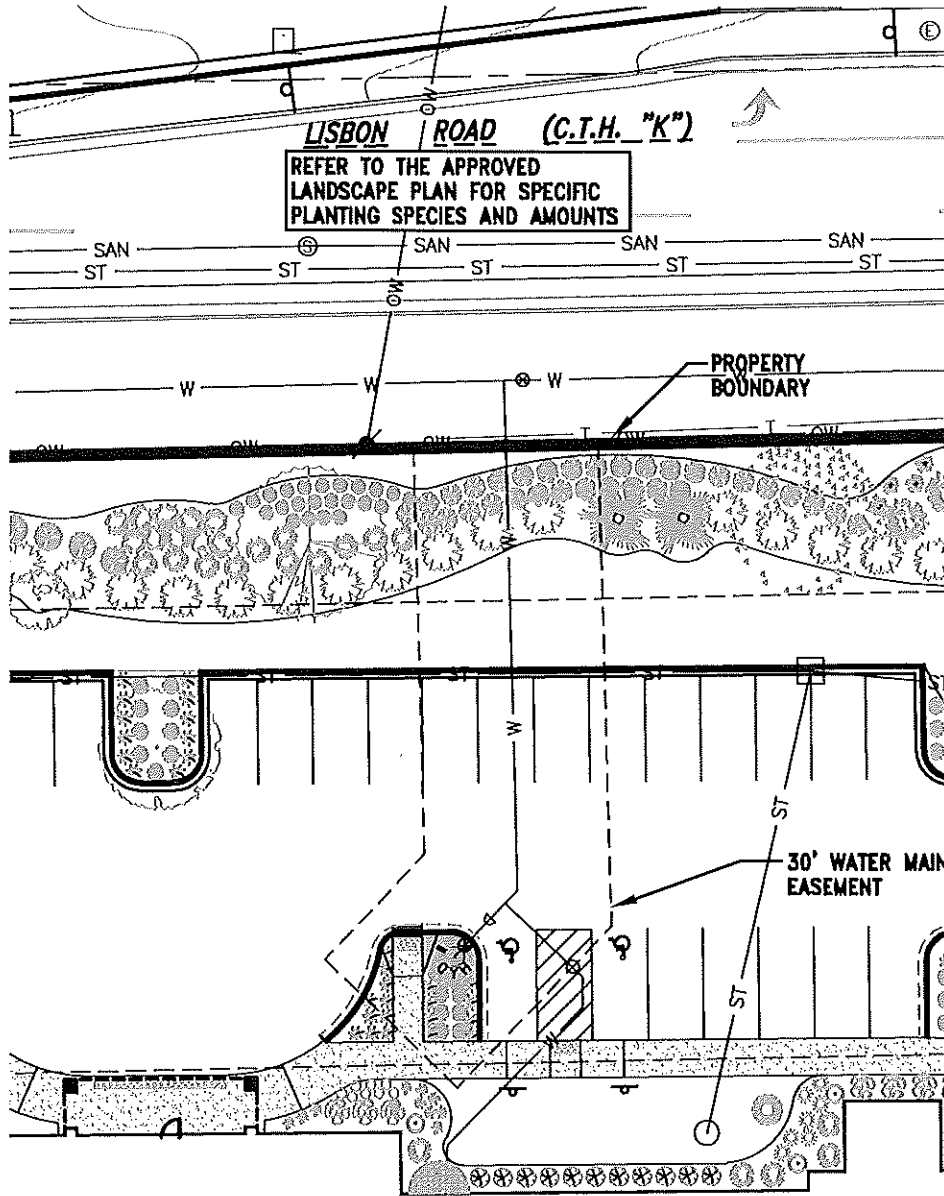


Grady L. Gosser, P.L.S.  
Professional Land Surveyor, S-2972  
**TRIO ENGINEERING, LLC**  
4100 N. Calhoun Drive, Suite 300  
Brookfield, WI 53005  
Phone: (262)790-1480 Fax: (262)790-1481

# EXHIBIT "C"

## CITY OF BROOKFIELD

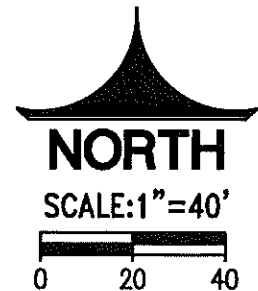
### LANDSCAPE ENCROACHMENTS



PROPOSED BUILDING



4100 N. Calhoun Rd  
 Suite 300  
 Brookfield, WI 53005  
 Phone: (262) 790-1480  
 Fax: (262) 790-1481



PAGE: 1 OF 1  
 DATE: 9/11/23